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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,853	09/12/2002	Georg W. Bornkamm	1406/50	2248

25297 7590 07/21/2004

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EXAMINER

TRAN, MY CHAU T

ART UNIT	PAPER NUMBER
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1639

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/088,853

**Applicant(s)**

BORNKAMM ET AL.

**Examiner**

MY-CHAU T TRAN

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 18-46 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of Claims***

1. Applicant's preliminary amendment filed 3/21/02 is acknowledged and entered. The specification has been amended.
2. Applicant's preliminary amendment filed 6/23/03 is acknowledged and entered. Claims 1-17 have been canceled. Claims 18-46 have/has been added.

### ***Election/Restrictions***

3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

- a. A source cell.
- b. A microorganism of the source cell.
- c. A virus.
- d. If applicant elected a recombinant virus, an ultimate species of retrovirus is required.
- e. If applicant elected a recombinant influenza virus, a single species of influenza virus and its corresponding SEQ ID NO. (i.e. SEQ ID NO: 7 or SEQ ID NO: 8) are required.

- f. If applicant elected a wild type influenza virus, a single species of wild type influenza virus is required.
- g. A target cell.
- h. A type of immortalization of the target cell.
- i. A MHC molecule.
- j. A T-cell.
- k. A type of assay.

Applicant is required, in reply to this action, to elect *a single species from each categories* to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify *the claims readable on the elected species*, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

4. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: The species lack the same or corresponding special technical features, each from the other, because they are structurally and/or functionally

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different. The different types of source cell are structurally and functionally different. The different types of microorganism of the source cell are structurally and functionally different. The different types of virus are structurally and functionally different. The different types of recombinant virus are structurally and functionally different. The different types of recombinant influenza virus are structurally and functionally different. The different types of wild type influenza virus are structurally and functionally different. The different types of target cell are structurally and functionally different. The different types of MHC molecule are structurally and functionally different. The different types of T-cell are structurally and functionally different. The different modes of immortalization are structurally and functionally different. The different types of assay are structurally and/or functionally different.

5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to MY-CHAU T TRAN whose telephone number is 571-272-0810. The examiner can normally be reached on Mon.: 8:00-2:30; Tues.-Thurs.: 7:30-5:00; Fri.: 8:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ANDREW WANG can be reached on 571-272-0811. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mct  
July 13, 2004

  
PADMASHRI PONNALURI  
PRIMARY EXAMINER